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FILED
12/14/2022
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CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
43D-6010-A-2022
Stradley, Anna
2.00

IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE DIVISION
CLARKS FORK YELLOWSTONE RIVER BASIN (43D)
PRELIMINARY DECREE

CLAIMANT: Weimer Ranch LLC

CASE 43D-6010-A-2022
43D 2299-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Statement of the case

Weimer Ranch LLC filed a motion to amend the point of diversion and place of use for stock claim 43D 2299-00.

Issue

The point of diversion and place of use legal land description identified by the preliminary decree abstract for livestock direct from source claim 43D 2299-00 is the S2NE of Section 8, Township 9 South, Range 22 East, Carbon County. Weimer Ranch LLC contends the historically accurate point of diversion and place of use legal land description for stock claim 43D 2299-00 is Lot 3, S2NE of Section 8, Township 9 South, Range 22 East, Carbon County.

Should Weimer Ranch LLC's motion to amend claim 43D 2299-00 be granted?

Findings of fact

1. Ruby S. Weimer filed statement of claim 43D 2299-00. Statement of claim 43D 2299-00 identified the point of diversion in the S2NE of Section 8, Township 9 South, Range 22 East, Carbon County, and the place of use in Section 8, Township 9 South, Range 22 East, Carbon County.

2. The Department of Natural Resources and Conservation ("DNRC") modified the legal land description for the place of use to match the point of diversion during claims examination. (*See* DNRC Examination Worksheet signed by TMC, dated February 2, 1990, claim file 43D 2299-00.)

3. A chain of title included in the claim file establishes that Ruby S. Weimer transferred upon her death, Lot 3 of Section 8, Township 9 South, Range 22 East, Carbon County to Jack W. Weimer, Sherman S. Weimer, and Jack Weimer, Trustee, followed by a Quit Claim Deed for the same legal land description from Jack W. Weimer and Sherman Weimer to the current claimant, Weimer Ranch LLC.

4. A preponderance of evidence establishes the historically accurate point of diversion and place of use legal land description for stock claim 43D 2299-00 is Lot 3, S2NE of Section 8, Township 9 South, Range 22 East, Carbon County.

Principles of law

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. Prima facie proof may be overcome by other evidence that proves, by a preponderance of the evidence, that an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim

is incorrect. Rule 19, W.R.Adj.R. A preponderance of the evidence is a “modest standard” and is evidence that demonstrates the fact to be proved is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 348, 240 P.3d 628.

2. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

3. The Montana Water Court has jurisdiction to review a motion to amend pursuant to Section 85-2-233(6), MCA.

4. If an element of a claim did not appear on the objection list for a basin, and a motion to amend that element is filed with the Court, notice by publication of the amendment is required if there is the possibility of adverse affect to other water users. Section 85-2-233(6), MCA.

5. Rule 15 M.R.Civ.P. restricts the scope of an amendment to the conduct, transaction, or occurrence set forth in the original pleading - the “same set of operative facts as contained in the original pleading.” *Sooy v. Petrolane Steel Gas, Inc.*, 218 Mont. 418, 422-423, 708 P.2d 1014, 1017 (1985). The requested amendment “merely makes more specific that which has already been alleged.” *Prentice Lumber Company v. Hukill*, 161 Mont. 8, 15, 504 P.2d 277, 281 (1972).

6. The party seeking to amend a water right claim has the burden to show, by a preponderance of the evidence, that the claim elements they challenge do not accurately reflect the beneficial use of the water rights as they existed prior to July 1, 1973. *Nelson v. Brooks*, 2014 MT 120, ¶34, 375 Mont. 86, 329 P.3d 558; Rule 19, W.R.Adj.R.

Analysis

The changes requested in Weimer Ranch LLC’s motion to amend arise out of the same conduct, transaction, or occurrence specified on the original statement of claim, are based on the same operative facts specified in the statement of claim, and make more specific what was claimed on the original statement of claim. The statement of claim and the motion to amend and evidence in support of the motion to amend are sufficient to

support the historical accuracy of the amended point of diversion and place of use identified by claim 43D 2299-00.

The requested amendment does not adversely affect other water users as it is a correction to the abstract which does not make any change to the actual historical use of the claimed right on the ground. Notice by publication of this amendment is not required.

Weimer Ranch LLC's motion to amend included a map depicting the historically accurate point of diversion and place of use for claim 43D 2299-00. A copy of the map is included with this report. Both the report and the map will be placed in the claim file for future reference.

Conclusion of law

Weimer Ranch LLC's motion to amend stock claim 43D 2299-00 should be granted.

Recommendations

Claim 43D 2299-00 should be amended as follows to accurately reflect historical use.

POINT OF DIVERSION AND PLACE OF USE:

<u>GOVT LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
3	S2NE	8	9S	22E	CARBON

A Post Decree Abstract of Water Right Claim accompanies this report to confirm implementation of the recommendations in the state's centralized water right record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

Weimer Ranch LLC
10112 Valley Dr E
Miles City, MT 59301-5945

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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
CLARKS FORK YELLOWSTONE RIVER
BASIN 43D**

Water Right Number: 43D 2299-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: WEIMER RANCH LLC
10112 VALLEY DR E
MILES CITY, MT 59301 5945

Priority Date: FEBRUARY 28, 1897

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: UNNAMED TRIBUTARY OF CLARKS FORK YELLOWSTONE RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	3	S2NE	8	9S	22E	CARBON

Period of Diversion: NOVEMBER 1 TO MARCH 1

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

SOURCE IS COMPOSED OF SEVERAL UNDEVELOPED SPRINGS WITHIN THE POINT OF DIVERSION LEGAL LAND DESCRIPTION.

Period of Use: NOVEMBER 1 TO MARCH 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		3	S2NE	8	9S	22E	CARBON